

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

In the Matter of the Marriage of)	
)	No. 62079-7-I
CHRISTINE K. HAZLETT,)	
)	DIVISION ONE
Respondent,)	
)	
and)	
)	
STEVEN R. HAZLETT,)	UNPUBLISHED OPINION
)	
Appellant.)	FILED: September 28, 2009
)	

AGID, J.—Steven Hazlett argues that the record does not support the trial court’s determination that he engaged in abusive use of conflict and that the trial court abused its discretion by requiring that his contact with his two children must be supervised until he undertakes psychological or psychiatric counseling. Steven¹ does not provide a full record on appeal and his past conduct, a psychologist’s recommendation that he undertake counseling and the recommendation of the court-appointed special advocate (CASA) adequately support the trial court ruling. Steven’s

¹ For ease of reference, we refer to the parties by their first names.

challenge to the award of sole decision-making authority over the children to Christine, including religious matters, also fails.

Steven challenges the continuing restraining order contained in the June 24, 2008 decree of dissolution. It appears that the restraining order reversed the trial court's prior written "finding" rejecting Christine's request for such a restraining order, with no notice to Steven that the trial court was revisiting the question of a restraining order. It also appears there was no hearing at which Steven could object to the court revisiting that issue, and the trial court amended its original finding without a hearing or notice to Steven. A new hearing is appropriate to insure that any continuing restraining order is properly entered.

Steven's remaining arguments are not persuasive.

We remand for a new hearing on the imposition of any continuing restraining order and affirm all other provisions in the decree of dissolution, parenting plan and child support order.

FACTS

Christine and Steven Hazlett each represented themselves at the dissolution trial. The attorney for the CASA was present throughout the trial. The trial court listened to the testimony of Christine and Steven on June 11, 2008. On June 12, 2008, the trial court heard closing argument and issued its oral decision, concluding that Steven had engaged in abusive use of conflict and accepting the CASA's recommendations that Steven's contact with the children should be limited and

supervised until he undertakes psychological or psychiatric counseling. The trial court asked the attorney for the CASA for recommendations on how to structure the parenting plan, including the requirement for counseling and supervision of Steven's contact with the children.

In its oral decision, the trial court did not address Christine's request for a continuing restraining order, but that same day, the trial court signed a set of findings of fact and conclusions of law provided by Christine. Paragraph 2.13 of the findings is entitled "Continuing Restraining Order." Below are two boxes both of which were marked with a typewritten "X," but the box providing for a restraining order has been crossed out:

2.13 Continuing Restraining Order

☒ Does not apply.

☒ A continuing restraining order against the ☒ husband ☐ wife ☐ both parties is necessary because: Steven Hazlett is restrained from molesting, assaulting, harassing, or stalking the mother of the children and the children. Steven Hazlett shall not come within 500 feet of the mother or the children.

The June 12 conclusion of law 3.5 reciting that "[a] continuing restraining order should be entered" is also crossed out.

The court concluded the June 12 hearing by advising the parties to provide the bailiff with proposed final documents by noon on June 23, 2008. It appears that the attorney for the CASA provided proposed final documents on June 23. On June 24, the trial court signed a decree of dissolution and parenting plan. At section 3.8 of the decree, the court imposed a continuing restraining order, restraining Steven from knowingly coming within 500 feet of the home, work place of Christine or the school of

the two children, or molesting, assaulting, harassing, stalking or disturbing the peace of Christine. The provision includes a warning that a violation of the order is a criminal offense under chapter 26.50 RCW and subjects the violator to arrest. The space for entry of an expiration date is blank. A box is checked indicating that “[t]he restrained party or attorney appeared in court or signed this order; service of this order is not required.” Steven did not sign the decree, and he asserts there was no hearing on the presentation of the final decree.

On July 14, 2008, the trial court added a handwritten interlineation on the first page of the June 12 findings, noting that the findings were “Amended 7/14/08 See 2.13.” At paragraph 2.13 of the “amended findings,” the trial court interlineated an explanation that a restraining order had been entered at section 3.8 of the decree:

2.13 Continuing Restraining Order

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☒ A continuing restraining order against the ☒ husband ☐ wife ☐ both parties is necessary because: Steven Hazlett is restrained from molesting, assaulting, harassing, or stalking the mother of the children and the children. Steven Hazlett shall not come within 500 feet of the mother or the children.

☐ Other:

2.14 Protection Order

☒ Does not apply.

→ Restraining
order in place
per J.O.
See ~~Find~~ 53.8.
Decree
TD on file
7/14/18

Steven timely filed his notice of appeal.

ANALYSIS

Parenting Plan. Decisions concerning the provisions of a parenting plan are reviewed for abuse of discretion.² In deciding the provisions of a parenting plan, the trial court must consider any “abusive use of conflict by the parent which creates the danger of serious damage to the child's psychological development.”³ Steven challenges the finding that he has engaged in an abusive use of conflict, but he has not provided an adequate record to challenge the sufficiency of the evidence. The appellant has the burden of providing an adequate record for appeal.⁴ Steven has not provided copies of several reports that were before the trial court and were discussed in the verbatim report of proceeding, including the reports of psychologists and one of the CASA's reports.

Additionally, his challenge consists of rearguing the facts. Factual disputes will not be retried on appeal. We accept the trial court's findings of fact if the findings are supported by substantial evidence in the record.⁵ "Evidence is substantial if it exists in a sufficient quantum to persuade a fair-minded person of the truth of the declared premise."⁶ We defer to the trier of fact on issues of conflicting testimony and the credibility of witnesses.⁷

² In re Marriage of Littlefield, 133 Wn.2d 39, 46, 940 P.2d 1362 (1997).

³ RCW 26.09.191(3)(e); In re the Marriage of Burrill, 113 Wn. App. 863, 868, 56 P.3d 993 (2002), review denied, 149 Wn.2d 1007 (2003).

⁴ In re Marriage of Haugh, 58 Wn. App. 1, 6, 790 P.2d 1266 (1990).

⁵ In re Marriage of Thomas, 63 Wn. App. 658, 660, 821 P.2d 1227 (1991).

⁶ Burrill, 113 Wn. App. at 868.

⁷ Id.

Steven contends that the trial court should have accepted his version of a fight with a friend of Christine's that occurred in the presence of the children in a parking lot, and his explanation for his outbursts of anger, repeated e-mails and angry phone calls rather than Christine's versions of those events. He focuses upon the favorable portions of psychologists' reports that he is no danger to his children rather than the expert conclusions that he needs psychological and domestic violence treatment. The trial court, as fact finder, also was entitled to weigh Steven's explanation why he shot his 8-year-old son in the leg with a BB gun (pumped only once) to teach him the harm that can come from misusing the gun; his explanation that he was unable to designate a counselor for the children as ordered by the court because Christine would not tell him what type of counseling the children needed, and his difficulties arranging for the supervised visitation ordered by the trial court prior to trial. The trial court was also free to weigh the CASA's recommendation that Steven's contact with the children should be limited and supervised until he engages in psychological or psychiatric counseling.

The limited record provided on appeal contains substantial evidence supporting the trial court's determination of abusive use of conflict. Based upon that finding, the trial court did not abuse its discretion in imposing the limitations upon Steven's contact with his children. Similarly, the trial court did not abuse its discretion by awarding the decision-making authority to Christine in the parenting plan.

Steven offers a vague and general argument that his constitutional right to freedom of religion precludes an award of major decision-making for "religious

upbringing” to Christine. He offers no authority other than the partial name of a case. Constitutional arguments that have not been adequately briefed need not be addressed on appeal.⁸ We decline to address his freedom of religion argument.⁹

Award of Tax Exemptions. Steven challenges the trial court’s award of tax exemptions for both children to Christine arguing that the trial court exceeded the relief requested by Christine in her petition for dissolution. But Steven has not provided the petition for dissolution as part of the record on appeal. Because he failed to provide an adequate record on appeal, his challenge fails.¹

Continuing Restraining Order. Steven challenges the continuing restraining order contained in the June 24, 2008 decree of dissolution as well as the July 14, 2008 “Amended Findings.” He argues that he did not receive a copy of the proposed decree drafted by the attorney for the CASA, he did not receive any notice that the trial court was going to revisit the June 12 findings of fact and there were no hearings on the presentation of the final decree or on the amendment of the findings. The CASA has not responded to this appeal. Christine, who is represented by an attorney on the appeal, does not dispute Steven’s assertion that he was not provided with a copy of the proposed decree and that there were no hearings on the entry of the decree or the

⁸ City of Spokane v. Taxpayers of Spokane, 111 Wn.2d 91, 96, 758 P.2d 480 (1988); State v. Davis, 53 Wn. App. 502, 506, 768 P.2d 499 (1989).

⁹ We note that an express restriction upon a father’s ability to provide religious teaching to his children implicates freedom of religion, but merely granting the mother sole decision-making authority is reviewed for an abuse of discretion. In re Marriage of Jensen-Branch, 78 Wn. App. 482, 490, 899 P.2d 803 (1995).

¹ Haugh, 58 Wn. App. at 6.

amended finding. She argues that Steven had notice that a restraining order was at issue in the case and that it was within the discretion of the trial court to impose the restraining order and to correct any clerical errors in the June 12 findings.

There is a due process concern when a party does not have reasonable notice of and opportunity to address an issue that is before the trial court.¹¹ Once a final judgment has been entered, the amendment of findings of fact is limited to clerical errors, such as an unintended finding as revealed by the trial court's oral ruling.¹²

Steven had notice that Christine was seeking a permanent and restrictive restraining order because she made the request in her trial brief, her testimony and her closing argument. The trial court also advised him that June 23 at noon was the deadline for proposed final orders. But once the trial court crossed out Christine's proposed 2.13 continuing restraining order, marked the box that a continuing restraining order "[d]oes not apply" and crossed out conclusion of law 3.5 that a continuing restraining order should be entered, it is understandable that Steven did not anticipate that the final decree would include a restraining order. The trial court's June 12 oral decision made no mention of any intent to enter a continuing restraining order, and no additional hearings were set.

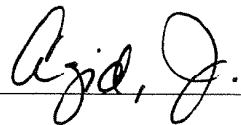
The confusion surrounding the June 24 continuing restraining order and the July 14 amended finding is especially troublesome because Steven arguably faces criminal

¹¹ In re Marriage of Leslie, 112 Wn.2d 612, 617, 772 P.2d 1013 (1989).

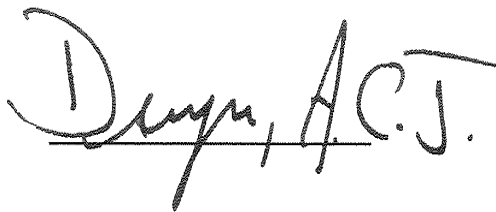
¹² See In re Marriage of Getz, 57 Wn. App. 602, 604, 789 P.2d 331 (1990) (modification or clarification proper under CR 60(a) if decree did not represent the court's intentions as revealed in the trial court's oral ruling).

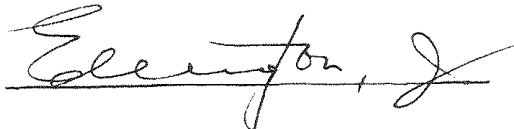
charges under chapter 26.50 RCW for any violation and the order contains no expiration date.¹³ In this setting, we conclude that a remand for a new hearing on the restraining order is appropriate.

We vacate the June 24, 2008 continuing restraining order and remand for a new hearing on the restraining order. In every other respect, the rulings of the trial court are affirmed. Christine requests attorney fees but does not offer any citation of authority supporting her request, and we decline to award fees on appeal.¹⁴



WE CONCUR:





¹³ It is not clear whether the trial court was relying upon RCW 26.50.060(2) to issue the continuing restraining order. A restraining order purporting to restrain the respondent from contacting his or her minor children is limited to one year unless there is a petition for a renewed order under RCW 26.50.060(3) or a request for protection order under a different statute such as chapter 26.09 RCW, chapter 26.10 or chapter 26.26. RCW 26.50.060(2); Muma v. Muma, 115 Wn. App. 1, 7, 60 P.3d 592 (2002), review denied, 149 Wn.2d 1029 (2003) (restraining order purporting to extend beyond one year is limited to one year in duration).

¹⁴ "Argument and citation to authority are required under [RAP 18.1(b)] to advise us of the appropriate grounds for an award." Wilson Court Ltd. P'ship v. Tony Maroni's, Inc., 134 Wn.2d 692, 711 n.4, 952 P.2d 590 (1998).

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